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IN THE
COURT OF APPEALS OF INDIANA

DOMONICO HOGUE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 17A03-0604-CR-182
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-0505-FB-7

November 15, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Domonico Hogue appeals his sentence for sexual battery. We affirm.

Issue

We restate Hogue's issue as whether his sentence is inappropriate in light of the nature of the offense and his character.

Facts and Procedural History

On May 4, 2005, the State charged Hogue with rape as a class B felony. On April 19, 2006, Hogue pled guilty to the reduced charge of sexual battery as a class D felony. The trial court imposed a sentence of two and one-half years.[1] Hogue now appeals.

Discussion and Decision

Hogue correctly states that this Court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). He contends that his sentence is inappropriate because the trial court failed to assign significant mitigating weight to his "limited intelligence and poor verbal skills." Appellant's Br. at 3. We note that the trial court is not required to find mitigating factors or to accept as mitigating the circumstances proffered by the defendant. *Simms v. State*, 791 N.E.2d 225, 232 (Ind. Ct. App. 2003). "Only when the trial court fails to find a significant mitigator that is clearly supported by the record is there a reasonable belief that it

[1] "A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years." Ind. Code § 35-50-2-7(a).

was overlooked." *Id*.

As the State points out, Hogue did not present the issue of his alleged mental impairment at sentencing. In fact, prior to accepting Hogue's guilty plea, the trial court asked him, "To your knowledge do you now suffer from any mental or emotional disability?" Tr. at 5. Defendant responded, "No, your Honor." *Id*. If the defendant fails to advance a mitigating factor at sentencing, we presume that the circumstance is not significant, and the defendant is precluded from advancing it as a mitigator for the first time on appeal. *Simms*, 791 N.E.2d at 233. Therefore, Hogue has waived review of this issue.

Waiver notwithstanding, the record does not clearly support Hogue's claim of mental impairment. The presentence investigation report includes a copy of a 1998 psychological evaluation indicating that, at that time, Hogue had a full scale IQ of 70, with a particular weakness in verbal skills and verbal expression. There is no evidence of more recent intellectual testing. Further, Hogue fails to explain why his alleged mental impairment should be given mitigating weight with regard to this conviction.

In sum, Hogue's sentence is not inappropriate. As aggravating factors, the trial court noted that Hogue had a significant juvenile history, and that "as sexual batteries go this is about as bad as it gets."[2] Tr. at 18. The court recognized as a mitigator that Hogue accepted

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[2] The amended charge to which Hogue pled guilty stated in relevant part as follows:

> [O]n or about the 20th day of March, 2005, in DeKalb County, State of Indiana, Dominico [sic] J. Hogue did touch A.M. with intent to arouse or satisfy his desires or the sexual desires of A.M. by touching her vagina when A.M. was compelled to submit to touching by force or by the imminent threat [of] force, which is contrary to the I.C. 35-42-4-8 and against the peace and dignity of the State of Indiana.

Appellant's App. at 38.

responsibility for his crime by pleading guilty. Acting within its discretion, however, the trial court assigned little weight to this factor because Hogue had already received the benefit of a reduced charge in exchange for his plea. Hogue's two-and-one-half year sentence is not inappropriate in light of his character and the nature of his offense.[3]

Affirmed.

BAKER, J., and VAIDIK, J., concur.

[3] Hogue contends that the trial court should have ordered a shorter prison term followed by a probation period long enough to allow him to complete sex offender treatment. The trial court was certainly not required to provide for such treatment, however.